IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
(Chapter VIII, Rule 32 (2) (b)

Description of Case

Writ Petition No. 654 of 2003 (S/B)
(Old No. 6010/85)

Dated of decision: 20th August, 2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date: 20.08.2007

Initials of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No. 654 of 2003 (S/B)
(Old No. 6010/85)

Sri Pitamber Datt Tewari
S/o Sri Govind Ballabh Tewari
Forest Guard
C/o Bhagwati Printing Press
Tikonia, Haldwani ...Petitioner

Versus

1. The State of U.P. through Secretary,
   Forest Department, Council House, Lucknow

2. Additional Chief Conservator of Forests,
   Kumaon Mandal, Nainital

3. Conservator of Forest.
   Western Circle, Nainital

4. The U.P. Public Services Tribunal-II
   Through its Chairman, Jawahar Bhawan,
   Lucknow ...Respondents

Mr. Alok Singh, Sr. Advocate for the petitioner.
Mr. Subhash Upadhyay, Brief Holder for the respondents.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

JUDGMENT

Per Hon'ble J.C.S. Rawat, J.

By means of this Writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:

> "a) Issue a writ, order or direction in the nature of certiorari quashing the judgment and order of opposite party no.4 in Annexure 1 dated 28.08.1985 excluding the portion relating to increment of Rs. 3/-.
>
> b) Issue writ, order or direction in the nature of certiorari quashing the order of D.F.O. Tarai dated 1.5.76 Annexure 2 in respect of with holding of 3 increments and not allowing pay during suspension

period and censuring him. Also quash the appellate order of opposite party no. 3 dated 26.7.77 in Annexure 2A and that of the opposite party no. 2 dated 12.1.82 Annexure 2B.

c) Issue writ order direction in the nature of mandamus commanding the opposite parties to allow the petitioner his full pay and allowances from the date of his suspension till the reinstatement allowing all his increments, as if the order in Annexure 2 had never been passed.

d) Issue any other writ, order or direction as may be deemed just and suitable.

e) Allow the petition with costs."

2. Brief facts for the disposal of this petition are that the petitioner was appointed as Forest Guard in Bore Range Khulapur beat of Taria Bhabhar Forest Division from 12.12.73 to 23.06.74. The petitioner remained on medical leave from 22.05.74 to 10.06.74. There was illicit felling of trees by the contractor in this range in lot no. 153/73-74. The petitioner reported the matter to the Forester of the area on 08.05.74 who instead of proceeding to the spot, ill-treated the petitioner. Thereafter, the petitioner reported the matter to the Range Officer on 10.5.1974 and the Range Officer made inspection of the area. The S.D.O. also made inspection of the lot alongwith Forester and other officials. Thereafter, the petitioner was suspended from his services on 18.10.1974. Preliminary inquiry was conducted about illicit felling of trees and the petitioner was served with a chargesheet on 15.02.1975. The petitioner had submitted his reply to the charges leveled against him. The departmental inquiry was held against the petitioner and as a result of the inquiry some of the charges found proved against the petitioner. The Inquiry Officer held that the charges of concealment of felling

of huge number of trees was not proved fully, but the petitioner was found guilty of gross negligence in his duties. After the finding of the inquiry, the punishing authority gave the petitioner notice as to why he should not be punished. It was further alleged in the petition that the petitioner's duty ended as soon as he reported the matter regarding illicit felling to the higher authorities. It was alleged that the Forester and Incharge Ranger had colluded with the Contractor and implicated the petitioner as he reported the matter. The petitioner's reply was not accepted by the punishing authority and awarded the punishment under its order dated 01.05.1976 withholding his 3 increments with cumulative effect, non payment of full salary for his suspension period and censured him. The petitioner submitted an appeal before the Conservator of Forest, Western Circle on 10.05.1976. The Conservator of Forest dismissed the appeal. The petitioner also submitted the appeal before the Additional Chief Conservator of Forest (respondent No. 2) but he also dismissed the appeal vide order dated 21.08.1982.

3. Feeling aggrieved by the said orders, the petitioner filed a Claim Petition before the Tribunal (respondent No.4). The learned Tribunal also dismissed the claim petition on 28.08.1985 except to this extent that the petitioner was entitled to one increment of Rs. 3/- which was due to him on 01.08.75 during the period of his suspension. Feeling aggrieved by the said order, the petitioner has preferred this petition.

4. The respondents have filed the counter affidavit and admitted that the petitioner remained on leave on medical

grounds from 25.05.1974 to 10.06.1974. It was further pleaded in the counter affidavit that in the beat in which the petitioner was incharge, there was heavy illicit felling of trees and it was found that the petitioner was not discharging his duties faithfully. It was further alleged that 1747 trees were found cut and removed illegally out of which 199 trees were cut by the nearby villagers' and rest 1548 trees of various diameters were found cut, removed by the contractor with the connivance of the petitioner. The petitioner was suspended on 18.10.74 but before passing the order of suspension, preliminary enquiry was completed in which it was revealed that there was illicit felling of trees worth Rs. 30313.90 which took place due to gross negligence of the petitioner. The petitioner reported the matter regarding illicit felling of trees when the material so illicitly cut was allowed to be removed. It was further pleaded that the petitioner was supplied every paper and he was also given every opportunity to defend himself. It was further pleaded that if the petitioner had discharged his duties rightly, the State Government would not have suffered a loss of Rs. 30,313.90. At last, it was pleaded that the writ petition devoids of merit and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the record.

6. Learned Senior Counsel for the petitioner submitted that the inquiry report submitted by the Inquiry Officer clearly reveals that the petitioner reported the matter of illicit felling of trees to the Forest Ranger as such the charge that the petitioner did not report the matter prior to 05.05.1974 has no meaning. It was further contended that the Inquiry

Officer has held that the permission given in the chits by the petitioner for allowing vehicles to cross the barrier on the basis of the report of the hand writing expert has not been established. The Inquiry Officer further held that the petitioner asked certain articles from the Contractor which were supplied by him to the petitioner. The petitioner has replied to the said charge that these articles were asked by the labourers' of the contractor. The Inquiry Officer erred in holding that the articles were taken by the petitioner illegally. The Inquiry Officer, at last, held the petitioner guilty of dereliction of duties, negligence and failure in performance of his duties. It was further contended that the Inquiry Officer was in midst of confusion about the charges having been proved so he could not therefore, held that the petitioner was negligent and he did not perform his duties diligently. It was further contended that the punishing authority erred in holding that the petitioner was guilty of dereliction of duties and negligence. The punishment of withholding of three increments permanently is violative of the provision of the U.P. Fundamental Rule 24 Vol. II to IV. It was further contended that the provision of U.P. Fundamental Rule 54 (B) (b) 5 has been violated as no notice according to this Rule was given to the petitioner. It was further contended that the punishment imposed by the disciplinary authority was grossly and shockingly disproportionate according to the facts and circumstances of the case. Mr. Subhash Upadhyay, Brief Holder of the State-respondents supported the judgment of the Tribunal and refuted the contention of the learned Senior Counsel for the petitioner.

7. It is a well- established principle of law that the High Court while exercising power of judicial review under Article

226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court may interfere where authority held the proceedings against the delinquent officer in a manner inconsistent with the principles of natural justice.

8. Thus, we cannot examine as to whether, the findings recorded by the Inquiry Officer or by the Appellate authority are correct or erroneous. We have to only examine the procedural aspect of the matter. Perusal of the inquiry report clearly reveals that the Inquiry Officer recorded the findings after considering the reply submitted by the petitioner. The petitioner was asked to give address of the defence witnesses but neither he could furnish the same nor produce any evidence in this behalf. The learned Senior Counsel could not demonstrate us that the petitioner was not given sufficient opportunity during the inquiry. Perusal of the record reveals that the petitioner was given sufficient opportunity during the inquiry. Thereafter, a show cause notice was issued to him which is quoted hereunder:-

> ''कार्यालय प्रभागीय बनाधिकारी तराई भावर बन प्रभाग हल्द्वानी ।
>
> पत्र संख्या 283 / लौट 153 / 73–74 दिनांक हल्द्वानी मार्च 31, 1976
>
> सेवा मे,
>
> श्री पिताम्बर दत्त,
>
> बन रक्षकः निलम्बित

द्वाराः राजि अधिकारी और ।

विषय : श्री पिताम्बर दत्त तिवारी बन रक्षक (निलम्बित) के विरूद्व
विभागीय अनुषासनात्मक कार्यवाही : शो काज नोटिस

सेवा में,

उप प्रभागीय बनाधिकारी रामनगर की पत्र सं 102/25 लोट 155/73–74 में अवैध कटान के लिये आपके उपर लगाये गये आरोप पत्र पर जांच रिपोर्ट इस कार्यालय को प्राप्त हुई। इस कार्योलय की पत्र सं 311/ लौट 153/73–74 दिनांक 15/2/75 द्वारा आपको आरोप पत्र भेजा गया था और आपके अपना बचाव पक्ष प्रस्तुत करने का पूरा अवसर दिया गया । आपने आरोप पत्र को प्रत्युत्तर दिनांक 2/4/75 को दिया। उप प्रभागीय अधिकारी जिन्हें इस मामले का जांच अधिकारी नियुक्त किया गया था ने आपके उपर शत प्रतिषत चष्मापोषी को आरेाप सिद्व न करते हुये कर्तव्य विमुखता एवं धोर लापरवाही के लिये जिम्मेदार माना है। जॉच अधिकारी की रिपोर्ट संलग्न कर भेजी जाती है।

आरोप पत्र, आरोप पत्र पर आपका प्रत्युत्तर दिनांक 2/4/75 व जॉच अधिकारी की जॉच रिपोर्ट का गहराई व सावधानी से अध्ययन करने पर मैंने यह पाया कि भले आपके उपर चष्मापोषी का आरोप शत प्रतिषत न भी माना जाये तो भी इस भारी मात्रा में हुये अवैध कटान के लिये आपको कर्तव्य विमुखता एवं घोर लापरवाही के लिये पूर्णतः दोषी पाया जाता है। अतः आपको निम्नलिखित दण्ड देने का प्रस्ताव है–

1. आपको वेतन वृद्वि पर 5 साल की रोक लगा दी जावे जिसका स्थाई असर हो।

2. आपको निन्दित किया जावे।

3. आपको निलम्बन काल में मिलने वाले जीवन निर्वाह भत्ते व अन्य अनुमन्य भत्ते के अतिरिक्त कोई धनराषि वेतन व भत्ते के रूप में इस निलम्बन काल के लिये न दी जावे और निलम्बन काल की अवधि को पेन्सन, वेतन वृद्वि आदि किसी भी प्रयोजनार्थ डयूटी न माना जाये।

आप इस नोटिस के प्राप्त होने के 20 दिन के अन्दर स्पष्टतया लिखित रूप से कारण बतायें कि क्यों न आपको उपरोक्त सभी दण्ड दे दिये जावें।

यदि आप व्यक्तिगत रूप से कुछ कहना चाहतें हों तो इस नोटिस के प्राप्त होने के 20 दिन के अन्दर ही आपको मुझसे मिलने की अनुमति प्रदान की जाती है।
संलग्न : जांच रिर्पोट

श्याम लाल

दिनांक 31.3.76
प्रभागीय बनाधिकारी
तराई भावर बन प्रभाग''

Thus it is evident from the notice that the petitioner was given sufficient opportunity before awarding the punishment.

9. Learned Senior Counsel laid emphasis that the disciplinary authority while passing the punishment order has clearly violated the provision of Rule 54 (B) (b) 5 of the U.P. Fundamental Rules. Rule 54 (B) (b) 5 of the U.P. Fundamental Rules provides as under :-

> "(5) In cases other than those falling under sub-rules (2) and (3), the Government Servant shall subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the dated on which the notice has been served) as may be specified in the notice."

It is apparent from the perusal of the notice quoted above that the punishing authority proposed the following punishments:-

> "(i) Increments should be stopped for 5 years with permanent effect.
>
> (ii) Censure entry.
>
> (iii) For the period of suspension he should be given only subsistence and other allowances and no pay shall be paid to him for this suspension period and the period should not be treated for duty for pension, increments and for any purposes."

The reply submitted by the petitioner is as under:-

"सेवा में,

श्रीमान प्रभागीय वनाधिकारी,
तराई भावर वनप्रभाग,

हल्द्वानी।

विषय : शो – काज नोटिस

महोदय,

निवेदन है कि प्रार्थी श्रीमान द्वारा जारी किये गये शो काज नोटिस के उत्तर में अपनी स्थिति निम्न प्रकार स्पष्ट करता है:–

1– श्रीमान उप प्रभागीय अधिकारी रामनगर द्वारा इस अवैध कटान के लिये मुझे शतप्रषित रूप में चष्मापोषी करने को आरोप नहीं सिद्व होने लिखा है। श्रीमान जी ने अपने पत्र संख्या 2831 लौट / 53/73–74 दिनांक 31 मई 1976 द्वारा जिसकी पुष्टि की है जहां तक कर्तव्य विमुखता एवं घोर लापरवाही का आरोप है यह आरोप मुल आरोप पत्र संख्या 3/2/ लौट 153/73–74 दिनांक 15.2.75 में अकिंत नहीं जहां तक मेरी जानकारी है ये आरोप अब नहीं लगाये जा सकते।

2– जहॉ तक चष्मपोषी का प्रष्न है मुझे निवेदन करना है कि बीट फो0 गार्ड के नाते मुझें 4 लोटों का कटान माफी की देखरेख बाट की सुरक्षा तथा अतिक्रमण सजग रहने का कार्य था। इसलिये मैं लाट न. 153/73–74 का निरीक्षण रोजाना करने में असमर्थ था लौट के निरीक्षण के दौरान मैंने 05/12/1974 को नाजायज कटान देखा माल वहॉ पर नही था ओर न किसी को काटते ही पकड़ा तुरन्त खोजबीन शुरू की और अपने उच्च अधिकारियों को मौखिक तथा लिखित रिर्पोट की जिसके फलस्वरूप दिनांक 15/5/ 74 व 16/5/74 को काम्बिगं शुरू हुआ काम्बिंग मे 5 व्यक्ति विभागीय थे जिसमें 2 उच्च पद के थे व फिर 22 मई 74 को भी कोम्बिगं हुआ 208 वृक्ष नाजायज कटे पाये गये जिसका मूल्य प्रतिकर 3306–20 रू0 वसूल किया गया इसी दौरान मुझको फंसाने के लिए इस लौट में ठेकेदार से मिल कर फिर जायायज कटान करवाया गया जिसके बाबात मैंने 18.6.74 को प्रभागीय वनाधिकारी ल0 भा0 वन प्रभाग से साक्षात्कार किया और फिर नायाजय कटान की रिर्पोट दी जिसके एक प्रतिलिपि फिर दे रहा हू। श्रीमान जी से मेरा निवेदन है कि अगर मै चष्मापोषी करता तो मै 22 मई कोम्बिगं के बाद 18 जून 74 को स्वयं आकर रिर्पोट क्यों करता श्रीमान जी मैं निर्दोष हू और चष्मपोषी को आरोप मेरे ऊपर सिद्व नहीं होता जहां तक कर्तव्य विमुख एवं लापरवाही का प्रष्न है वह भी मेरे विरूद्व बिल्कुल सिद्व नहीं होता क्योंकि मैंने वन रक्षक द्वारा किये जाने वाले कार्य को समय पर किया है, जिसकी पुष्टि कागजों को देखकर की जा सकती है। लौट में पालन अधिकारी नियुक्त था इसलिए लौट के अन्दर ठेकेदार द्वारा किये गये अवैध कटान की विषेष जिम्मेदारी पालन अधिकारी तथा खूॅट मोहर्रिर की होती है।

अन्त में मुझे निवेदन करना है कि मेरे ऊपर लगाये गये आरोप कानून सिद्ध नहीं होते और मैं दण्डनीय नहीं हूं यदि आवष्यकता हो तो मैं व्यक्तिगत रूप से स्पष्टीकरण देने के लिए तैयार हूॅ।

प्रार्थी
पीताम्बर दत्त तिवारी
वन रक्षक, बौर रनेज,
व0 भा0 बन खंड''

दिनांक 12.4.76

Though the punishing authority awarded the following punishment vide order dated 01.05.1976:-

> "(1) That except for pay and allowances during the suspension period, it shall be treated as duty for all purpose but besides the subsistence grant and admissible allowances no other amount will be payable for the suspension period.
>
> (2) That three annual increments after the date of issue of the order will be withheld which will have permanent effect.
>
> (3) That he is censured."

It is evident from the perusal of the above notice and reply that the petitioner was given sufficient notice under Rule 54 (B) (b) 5 of the U.P. Fundamental Rules. Thus we do not find any force in the contention raised by the learned Senior Counsel for the petitioner.

10. Learned Senior Counsel for the petitioner further contended that the punishment of withholding three increments of the petitioner permanently is violative of the provision of Fundamental Rule 24 Vol. II to IV. There could be no permanent withholding of 3 increments in view of the above Rule. Learned Brief Holder for the State refuted the contention. Rule 24 of the U.P. Fundamental Rules provides as under:-

> "24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the Government, or by any authority to whom the Governor may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments."

Perusal of the aforesaid rules clearly reveals that it did not bar to withhold increments permanently. Thus, there is no violation of Rule 24 of the U.P. Fundamental Rules.

11. It is apparent from the record that there was illicit felling of trees in the year 1974 in the beat of the petitioner. It is also on record that the petitioner did not report before 05.05.1974. The Inquiry Officer held that though charge of concealment of illicit felling of huge number of trees was not proved but it was proved in part against the petitioner and the petitioner was held guilty of gross negligence in his duties. Thereafter, his three increments were withheld with cumulative effect. It is settled position of law normally the punishment imposed by the disciplinary authority should not be disturbed by the High Court except in appropriate cases and that too only after reaching to the conclusion that the punishment imposed is grossly or shockingly disproportionate after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness and discipline required to be maintained. It is not disputed that the petitioner had been working as a Forest Guard and illicit felling of trees was found in his beat. The petitioner was found guilty of gross negligence for the same. The Forest Guard holds a position of trust where honesty ant integrity are in-built requirements of functioning and it would not be proper to deal with the matter leniently. He has a greater responsibility to protect the forest and the environment. Looking into the duties of the petitioner, the nature of the charges proved and the penalty imposed upon him by the competent authority, we do not find that the punishment imposed was grossly and shockingly

disproportionate in the facts and circumstances of this case. As such, the punishment awarded by the authority concerned does not require any interference.

12. For the foregoing reasons, we do not find any infirmity in the said punishment orders passed by the authorities concerned. The learned Tribunal was justified in holding that the order of the respondents was in accordance with law.

13. The writ petition devoids of merit & is liable to be dismissed and is dismissed accordingly.

14. No order as to costs.

(J.C.S. Rawat, J.) (Rajeev Gupta, C.J.)

Dated 20th August, 2007
Shiv